

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **VICE-CHAIRMAN DAN McGEE**, on April 11, 2003 at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SJR 32, 4/8/2003
Executive Action:

HEARING ON SJR 32

Sponsor: Sen. Duane Grimes, SD 20, Clancy.

Proponents: John Flink, Montana Hospital Association
Jani McCall, Deaconess Billings Clinic
Pat Melby, Montana Medical Association
Rose Hughes, Montana Health Care Association
Sami Butler, Montana Nurses' Association
Mona Jamison, The Doctors' Company
Al Smith, Montana Trial Lawyers' Association

Opponents: None.

Opening Statement by Sponsor:

Sen. Duane Grimes, SD 20, Clancy, opened by saying there have been subsequent issues which have arisen regarding this issue, and he now has a proposed amendment. Amendment SJ003201.avl was submitted as **EXHIBIT(jus78a01)**. On page 2, lines 3 through 6, **Sen. Grimes** would like to strike "existing." His intent is that an interim study committee will refer to the caps and discuss what kind of impact that has had. Additionally, he would like to talk about potential tort reform measures. **Sen. Grimes** does not feel it takes away from the ability to look at existing tort reform measures that are in place, but will indicate that those will be used as illustrations of how it does or does not work, and they will not focus on whether to remove those tort reform measures. **Sen. Grimes** does not want to imply in the bill that we should go back and study whether or not existing laws should be on the books. He believes it is a matter semantics. On page 1 in the WHEREAS clauses it talks about health care providers and after the bill was drafted, it was suggested to **Sen. Grimes** that problems are in the facilities and the health care providers associated with the facilities area. Therefore, he is going to submit proposals to change that language as well.

In one large hospital in Montana, medical malpractice levels in 1998 were \$192,000. By the year 2001, the amount was \$184,000. In the subsequent two years, it is now at \$2,844,000 for that same hospital. For a small rural hospital in eastern Montana, during that same period, a medical malpractice premium jumped from \$36,000 to \$425,000. This has now become a fiscal life-or-death issue for hospitals. Clearly, existing tort reform measures for health care providers will be looked at and scrutinized, but **Sen. Grimes** feels it would be prudent to focus where the critical problems are. **Sen. Grimes** directed the

Committee to look at lines 26 and 27 which states Montana does not have limits on attorney fees and expert witness criteria.

Sen. Grimes also noted that Montana has a compelling state interest in ensuring that affordable health care is available to all Montana citizens. The study will involve a review of what has been done in other states, strategies for increasing access, the relationship between cost of liability for health care facilities and providers, potential related tort reform measures and additions to the state's liability reforms already in place, strategies for resolving liability claims outside the court system, and then a review of the Montana Medical Legal Panel.

Sen. Grimes is open to changes and is confident a consensus can be reached on this issue and the decision will be pro-consumer and non-partisan. **Sen. Grimes** is not pushing an agenda for expert witness minimum qualifications. His goal with SJR 32 is to have a wide-open solid study aimed at trying to alleviate some of the incredible problems which are going to be created because of statistics.

Proponents' Testimony:

John Flink, representing Montana Hospital Association, agreed there is a problem with both the cost and availability of liability coverage for Montana health care facilities. The liability coverage premiums of Pioneer Medical Center in Big Timber, for example, increased from \$9,000 in 2001 to \$90,000 in 2003. The McCone County Medical Center in Circle, which has not had a medical malpractice claim in the past ten years, saw an increase from \$8,000 to \$10,000 a year to \$66,000 in 2003. The problem is one of cost, but it is also a problem of availability of coverage. Several large liability carriers for hospitals have left the state and created a void in the market. **Mr. Flink** feels this issue needs to be looked at, and recommendations need to be made in the 2005 Session for ways to increase access to this kind of coverage. MHA is not interested in revisiting the tort reforms enacted in previous sessions. **Mr. Flink** believes those have been very helpful in stabilizing rates and feels there are other issues at work here that need to be addressed.

Jani McCall, representing Deaconess Billings Clinic, submitted a letter from Kristianne B. Wilson, a member of the executive team of Deaconess Billings Clinic, to Senator Baucus, **EXHIBIT(jus78a02)**. This letter states the liability insurance premium costs for Deaconess Billings Clinic has doubled and now totals \$3.5 million. The claim retention limit for Deaconess Billings Clinic has increased 900 percent in two year, and the aggregate retention limit has increased 1,900 percent. **Ms. McCall** strongly supports this resolution and believes this issue needs to be studied.

Pat Melby, representing the Montana Medical Association, stated the tort reform measures have done much to stabilize premiums for physicians; however, there are some specialty groups that have experienced very dramatic increases in premiums, such as orthopedic surgeons and neurosurgeons, as well as obstetrics and gynecologists. There are a number of medical malpractice tort reform measures introduced during the session, and during those hearings, there was much dispute whether the increase in premiums experienced by health care providers and facilities was due to lawsuits or factors in the stock market, and to September 11. A study of this issue would help to resolve those concerns and provide direction for further tort reform in the future.

Rose Hughes, Executive Director of Montana Health Care Association, represents nursing homes and assisted living facilities throughout the state of Montana. One of the primary concerns of those facilities is the availability and cost of their liability insurance. This is also the major concern of assisted living facilities. **Ms. Hughes** was surprised by this fact since the level of care is minimal and the same liability issues do not exist in assisted living facilities. She has seen rates double, and in some instances triple. The rates are not going up because of claims. A long-term study indicates that over the last couple of years, a huge proportion of the increase in health care costs is due to the increase in liability insurance premiums. This means the cost of health care is going up, but the amount or quality is not rising accordingly. **Ms. Hughes** asked the Committee to look at an increase in a facility's liability insurance where the premium went up \$50,000 or \$60,000 and to consider how many hours of nursing could be purchased for that amount of money. For some of the smaller providers, there is a smaller chance of being sued if the operator does not carry insurance. Other states are considering other solutions and resolutions to this problem. **Ms. Hughes** suggested Montana may want to follow the lead of some of those other states.

Sami Butler, Montana Nurses' Association, stated the Nurses' Association has a sub-group within their practice called Advance Practice Registered Nurses, who provide primary care throughout Montana. There are ten counties in the state that do not have primary care physicians. These nurses can provide that care, but this past year, their malpractice insurance has increased 69 percent. This increase is impacting their ability to do business. **Ms. Butler** supports the joint resolution because it takes a health care team to provide good health care in Montana.

Mona Jamison, representing The Doctors' Company (TDC), testified TDC is a California-based insurance company which is physician owned and operated. TDC provides medical malpractice insurance

for physicians, and does not insure hospitals, nursing homes, or clinics. **Ms. Jamison** wanted to make it clear TDC insures physicians only. TDC supports SJR 32 with the amendments because TDC appreciates the crisis health care facilities are facing.

Ms. Jamison understands that many health care facilities are hiring physicians and having to provide insurance. Since HB 309 has passed, insurance rates have stabilized. **Ms. Jamison** testified that where there is reform and caps on non-economic damages, the average increases in med mal rates are substantially less than in the states without those reforms. TDC will be an active player in offering assistance and information as to how specific reforms relate to physician med-mal rates.

Al Smith, representing the Montana Trial Lawyers' Association, submitted a packet of information to the Committee members, **EXHIBIT(jus78a03)**. **Mr. Smith** testified there is no denying the rapid increase in the rates experienced by hospitals in the last few years. **Mr. Smith** is concerned because the study seems to be primarily pointed at tort reform which he feels ignores the whole problem. There is an insurance crisis also being experienced in the building industry. In many cases, premiums go up when no claims have even been made. **Mr. Smith** pointed out that liability insurance from lawyers has also gone up. **Mr. Smith** pointed out that we are in a cycle with a hard market in the insurance industry. Insurance companies are making money by investing premiums in the market. When the market goes south, we see spikes in insurance rates. The other thing **Mr. Smith** would like the Committee to consider is that malpractice is increasing the costs of health care in general. **Mr. Smith** feels health care costs are not being driven by medical malpractice.

(Tape : 1; Side : B)

In addition, medical errors lead to medical malpractice claims, and medical errors need to be decreased in the first instance to get a grip on the medical practice issues being confronted in Montana. **Mr. Smith** spoke about "To Err is Human" part of Exhibit 3, which estimates between 44,000 and 98,000 Americans die each year because of medical errors in hospitals. The rest of that report makes recommendations on how medical errors can be decreased. There is evidence that in California that demonstrates it was not the tort reforms, but the insurance reforms, that caused the dramatic decrease and stabilization of rates in California. **Mr. Smith** suggested striking the word "major" on page 1, line 21, because of testimony indicating facilities' rates have gone up despite there being no claims made against the facilities. Therefore, he sees no evidence justifying the use of "major." In addition, **Mr. Smith** would like to see language added about professional liability insurance and

its relationship with economic market factors and insurance industry practices. **Mr. Smith** feels the Committee should look at the reality that medical malpractice premiums cannot be stabilized until they stabilize how insurers charge those premiums. **Mr. Smith** feels we should also look at what can be done to help health care facilities lower medical errors. **Mr. Smith** agrees there is a problem with medical malpractice insurance rates, but feels there is a problem with all insurance rates, and the entire issue needs to be studied, not just tort reform.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY wanted to know how Montana's health care insurance premiums compare with other states.

Ms. Jamison recalled that Montana's market is small compared to other states and our rates are lower.

SEN. GARY PERRY asked if by striking "providers" in the amendment and taking out the reference to physicians, whether **SEN. GRIMES** is attempting to limit the resolution primarily to facilities.

SEN. GRIMES understood the primary problem is with providers who are attached or associated with facilities, and that there is a disparate impact.

SEN. PERRY told **Mr. Melby** that he has recently learned from doctors about lawsuits they are involved in and the increase in those physicians' premiums despite tort reform. **SEN. PERRY** wonders if physicians should be included under SJR 32.

Mr. Melby is also familiar with physicians who have had increases in premiums. They would like to be included in the bill, but have not seen the amendment. **Mr. Melby** did not know the bill would be limited to health care facilities and hope the bill will include a study of malpractice and malpractice insurance for all health care providers.

SEN. PERRY asked **Webb Brown, representing Montana Chamber of Commerce**, why he did not testify as either a proponent or opponent on SJR 32.

Mr. Brown stated the Montana Chamber of Commerce would want to participate in the study. Even though he did not testify, **Mr. Brown** feels an interim study is a good idea.

SEN. PERRY stated on one side the focus of this issue is narrowed and, on the other hand, it could be expanded to include various areas of tort reform. The issue is the cost of medical malpractice insurance, regardless of whether they include physicians, and **SEN. PERRY** would like to know from what source of revenue premiums are paid for malpractice insurance.

SEN. GRIMES stated the costs are passed along to the consumers in patient costs and that is the result for both facilities and physicians.

SEN. PERRY asked if funds used to pay premiums come primarily from the patients, medical insurance, or medicaid.

SEN. GRIMES assumed it is a cost shift passed along from the insurance companies.

Bob Olson, Vice President of the Montana Hospital Association (MHA), restated **SEN. PERRY's** question as can a health care provider claim the increased liability cost as an allowable cost and responded yes, they can. The problem is the major payors, medicare and medicaid, do not adjust the amount they pay because it can be claimed as a cost. Therefore, the cost is increasing rapidly, and payments are not increasing to match those costs. The difference is redirected onto the private paying patient and private insurance companies.

SEN. PERRY stated to **Susan Good, representing Surgical Specialities, Orthopedic Surgeons, Neurosurgeons, and Anaesthesiologists**, that he is trying to tie this all together.

SEN. PERRY views this as a circle: Premium payments are being made by health care facilities and physicians to insurance companies; those costs are then passed on to the patients; and, patients' payments are made primarily by their insurance companies. In taking it a step further, **SEN. PERRY** would like to know what source are those payments made on behalf of the patient. Do they mostly come from group medical insurance through their employers? Private insurance?

Ms. Good noted that **SEN. PERRY** depicts this as a circle, while she views it as a spiral. Anytime a cost cannot be passed on, premiums go up and, depending on who pays those premiums, you have more and more people who are uninsured. The more people who are uninsured, means more uncompensated care, which further drives the spiral. It is clear that when costs go up for providers, it falls mostly upon those who can least afford it. For that reason, **Ms. Good** hopes physicians will be included in the study. **Ms. Good** reminded the Committee that while hospitals and nursing homes cannot simply pick up and move when insurance

premiums force them out of the market, physicians certainly can and will relocate. **Ms. Good** feels everything should be done to attract good quality medical providers to Montana.

SEN. JEFF MANGAN would like to know if increased liability costs are solely due to tort reform or whether it is a combination of several factors.

Mr. Flink felt it is a combination of a variety of factors. Montana is better off because of enacted tort reforms; however, there are other issues that are affecting the supply of insurance. September 11 is a factor, the underwriting cycle insurers go through, and high claims in other parts of the country could be a factor since it is a national insurance market. The dramatic increase in insurance premiums is having a serious impact on health care facilities. Tort reform has already been addressed, and **Mr. Flink** is interested in addressing some of the other issues about supply.

SEN. MANGAN asked if it would be a good idea to amend into the fact that the affects of September 11, the underwriting cycle, and the national insurance market are additional factors that should be looked at during the interim study.

Mr. Flink was not sure how productive that would be since they are broad issues and not issues that can be controlled by the Montana Legislature. These issues need to be debated on the national level. The study needs to look at things the Legislature can do in 2005 that really get to the supply issue.

SEN. MANGAN understands tort reform is not really an issue to be addressed by the study, and because **Mr. Flink** does not want to address the other factors, **SEN. MANGAN** wanted to know what the purpose of the study would be.

Mr. Flink responded that the study should address issues it has some control over. He feels there are some specific state things that could be looked at that would present options in the next session.

SEN. MANGAN supports the underlying concept of the resolution; however, during this session legislators have struggled with root causes and the information they utilize in order to make an informed decision. **SEN. MANGAN** felt putting these additional factors in the study resolution may assist legislators in making informed decisions.

Mr. Flink felt **SEN. MANGAN** made a valid point, but is concerned about the study being manageable and does not get bogged down

with root causes over which the legislature has no future control.

SEN. JERRY O'NEIL asked if the resolution was drafted broadly enough to allow the study to look at the actual rate of occurrence of malpractice in Montana.

SEN. GRIMES feels the question of how often medical malpractice is occurring and whether that occurrence is driving the cost will necessarily be considered. However, testimony indicates that is not the case. It would likely be how the study gets started. If the study indicates there are questions with the occurrence rate, the study would look more closely at that issue.

SEN. O'NEIL asked if the study indicated malpractice was actually increasing, whether the resolution would allow looking at the function of the oversight boards and their propensity to stop malpractice.

SEN. GRIMES stated the function of the Montana Medical Legal Panel is included in the resolution. The resolution does not include other oversight boards, but if it was determined a board is having a significant impact in the rates, it would be within the prerogative of the study to make suggestions and draw conclusions. The study needs to focus on the issue presented by MHA and the Montana Medical Association.

(Tape : 2; Side : A)

SEN. CROMLEY asked **Mr. Melby** about his statement that tort reform has done much in Montana to stabilize insurance premiums. He asked if the implementation of the Montana Medical Legal Panel (MMLP) was included in that reference.

Mr. Melby was including MMLP in his reference and felt the formation of the MMLP was one of the reforms that helped stabilize rates, and added the caps on damages and the joint and several liability statute also helped to stabilize rates in Montana.

SEN. CROMLEY noted **Mr. Melby's** testimony seemed to be inconsistent with other testimony and asked **Mr. Melby** for an explanation.

Mr. Melby did not feel his testimony was inconsistent but pointed out some of the testimony of others was related to hospital malpractice and premiums that had increased. **Mr. Melby** was speaking about medical malpractice premiums for physicians. For the most part, those premiums have gone up, but they have

stabilized. There are some specialties that have seen dramatic increases in their premiums.

SEN. CROMLEY stated tort reforms apply to both hospitals and physicians, which suggests to him that factors, other than tort reforms, are at play.

SEN. PERRY has been trying to tie together in principle the direction the legislature should be going in narrowing the focus of the study or broadening it. Ultimately, it comes down to the fact that businesses pay medical insurance premiums for the employees who, at some point, become patients of health care facilities and doctors. Therefore, **SEN. PERRY** feels this is not an area that can be narrowly focused on. He asked **Ms. Jamison** if she would agree that in order to solve a problem, the bigger picture needs to be looked at and how one area may affect another area of the economy.

Ms. Jamison stated it is the difference between a dream and a reality. She believes the kind of study that examines all of these components is what is happening at the national level. Montana is not able to fund or commit the time required to get to the bottom of all the information. The debate now has shifted away from the sponsoring parties' intentions to look at medical liability insurance issues and problems existing in health care facilities. The medical malpractice insurance health care facilities pay for their doctors, who are their employees, is a part of this issue. Clearly, the jumps that health care facilities are experiencing in their premiums, are outside of the medical malpractice issues for doctors. **Ms. Jamison** thought the focus of the study would be what is going on to effect those increases. In terms of her client insuring only doctors, standalone doctors in private practices, there has been a stabilization. The friction is between the insurance industry and the trial attorneys. One is saying it is, in part, litigation, settlements, the threat of punitives, and everything that goes into litigation that forces settlements. The other side says the insurance companies are up to no good. **Ms. Jamison** feels the narrowing is important in order to get your hands around the issue. **Ms. Jamison** assured the Committee that as an insurance company insuring physicians, TDC will explain as best as possible what goes into the pricing of the products and how those costs filter down. In addition, **Ms. Jamison** stated the bottom line is changing the way society thinks in terms of outcome. Sometimes there is a bad outcome. This also has a tremendous impact on the frequency of litigation and the amount of settlements. **Ms. Jamison** does not feel Montana is capable of performing a super, super comprehensive study. Including the doctors in the study will shift the focus of the study from what

the requesting parties want examined to medical malpractice for physicians. She is not sure this will achieve the goals of the sponsoring parties.

Closing by Sponsor:

SEN. GRIMES stated there are two ways to address a study. One would be for the legislature to do it, or assign the study to someone else. **SEN. GRIMES** feels the issue is so important, it need to be done by an interim committee and warrants immediate attention. It needs to be decided whether the study should be narrowed to health care costs or should it address insurance reform, which maybe outside of the legislatures purview. **SEN. GRIMES** feels the focus should be narrowed and the resolution focuses on tort reform measures. He feels the resolution should focus on liability coverage only. This could imply that tort reform measures need to be looked at and may identify other areas. **SEN. GRIMES** feels it is imperative the resolution goes forward on behalf of the health care facilities in Montana. He feels this needs to be a high-priority. Providers will naturally be included because of their close connection to health care facilities. **SEN. GRIMES** is inclined to include physicians, but not to the extent that it will distract the study from the health care facilities. He does not want the issue of insurance premiums for physicians to dominate the study. **SEN. GRIMES** felt the Committee should go through this resolution point-by-point. This issue is something that has to be looked at by the Montana Legislature.

EXECUTIVE ACTION ON SJR 32

Motion: **SEN. MCGEE** moved **SJR DO PASS.**

Discussion:

SEN. GRIME proposed on page 2, line 4, to strike "relationship between" and then before the word "providers" on line 5 insert "associated". Also, **SEN. GRIMES** stated he would be willing to pull out language referring to related tort reform measures. Language on line 6 should refer to affordable professional liability coverage in Montana rather than affordable health care.

Ms. Valencia Lane stated the resolution does not need to refer to access to professional liability coverage but should simply refer to the availability of affordable professional liability coverage. **Ms. Lane** recited the sentence to read "or direct sufficient staff resources to study the costs of professional liability insurance for health care facilities and providers

associated with the health care facility, affordable professional liability coverage in Montana."

SEN. PERRY suggested the language should read "costs and availability of professional liability coverage".

SEN. GRIMES agreed.

SEN. MIKE WHEAT pointed out that the sentence could end after the reference to associated providers.

SEN. GRIMES stated there has been some heartburn over the use of the word "professional."

Mr. Flink stated the concern is that using the word "professional" will only refer to physicians where use of the word "medical malpractice liability coverage" would refer to providers, as well as facilities.

SEN. AUBYN CURTISS wondered if adding "and institutional" would solve the problem.

SEN. CROMLEY suggested deleting "professional".

Ms. Lane recited the lines 4 through 6 as "or direct sufficient staff resources to study the costs and availability of liability insurance for health care providers associated with health care facilities."

Motion: **SEN. CROMLEY** moved the amendment to lines 3 through 6.

Vote: The motion **carried UNANIMOUSLY**, with **SEN. MANGAN** voting by proxy.

Discussion:

In reviewing lines 7 and 8, the Committee again decided to strike references to "professional" and inserting "providers associated with". Subparagraph (2) will be amended by inserting "availability of" in place of "access to".

SEN. O'NEIL asked about subsection (3) and adding "protection of the consuming public." In changing tort reform, **SEN. O'NEIL** would like to protect the public.

SEN. MCGEE thought (3) was referring to the relationship between the cost of liability insurance and tort. **SEN. MCGEE** suggested referring simply to "tort" rather than "tort reform measures."

SEN. O'NEIL agreed.

SEN. McGEE stated he would support amendments to study the relationship between the cost of liability insurance with regard to the economy of the insurance industry and also to study the relationship of the cost of liability insurance with consumers.

Motion: **SEN. CROMLEY** moved the suggested amendments to subparagraphs (1) and (2), lines 7 through 10.

Vote: The motion **carried UNANIMOUSLY**, with **SEN. MANGAN** voting by proxy.

Motion: **SEN. CROMLEY** moved subsections (4) and (5) be deleted.

(Note: Tape 2, Side B, was left blank.)

(Tape : 3; Side : A)

Discussion:

SEN. GRIMES has heard varying critiques of how the MMLP functions and feels a study of that process may be valuable.

Substitute Motion: **SEN. WHEAT** moved subparagraph (4) be deleted and subparagraph (5) be changed to read "strategies for resolving liability claims outside of the court system."

Discussion:

SEN. WHEAT felt it will be implied MMLP will be included as one of those strategies.

SEN. GRIMES asked what else could be involved in this other than MMLP.

SEN. WHEAT did not know of anything off hand but was suggesting the language was limiting.

Vote: **SEN. WHEAT's** motion that subparagraph (4) be deleted and subparagraph (5) be changed to read "strategies for resolving liability claims outside of the court system" **carried UNANIMOUSLY**, with **SEN. MANGAN** voting by proxy.

Motion: **SEN. McGEE** moved subparagraph (3), lines 11 and 12, be amended to read "the relationship between the cost of liability insurance for health care facilities and: (a) issues of tort; (b) effects on consumers; and (c) economic insurance factors."

Discussion:

SEN. WHEAT suggested subsection (c) read "market place factor that influence insurance."

SEN. PERRY stated the Committee had earlier been discussing narrowing the focus.

SEN. WHEAT stated if the Committee is truly interested in looking at the relationship between the costs of insurance and being able to provide health care, they have to look at the underlying market factors that drive the cost of insurance.

SEN. McGEE suggested subsection (c) of his proposed amendment refer to "market factors on insurance costs."

SEN. GRIMES is not afraid to look at this issue, but he is afraid of making it a major focus of the study. He sees the interim committee as having some kind of report to understand the environment and not operate blind. He does not want to see the interim committee derailed.

SEN. CROMLEY agreed and does not think the study should have to go back to the very beginning. He feels there is a lot of information available from insurance companies.

SEN. WHEAT added the State Auditor's Office will have information and representatives from the insurance companies will help with the study. **SEN. WHEAT** would like to participate in the interim committee and suggested if other members of Senate Judiciary were included, they could help guide the study.

SEN. GRIMES asked **SEN. McGEE** what he means by "effects on consumers."

SEN. McGEE replied that may not be the exact phrase used, but he is trying to address **SEN. O'NEIL's** concern about the person who finally pays the bill.

SEN. PERRY believes everything they are discussing is implicitly implied.

SEN. O'NEIL would like to assure the study keeps an eye on the quality of care provided to consumers.

SEN. CROMLEY asked if issues of tort will address quality of care.

SEN. O'NEIL wants to know if consumers are being protected property and treated properly. This could include negligence, bad oversight by a board, or a number of things.

SEN. GRIMES stated the assumption that tens of thousands patients die each year from medical errors would bring people in to defend themselves and will change the tenor of the whole study. He is concerned it would polarize the whole study and change the focus of the interim committee.

SEN. WHEAT stated the bottom line is that the implication that comes across is it is lawsuits that are driving the cost of liability insurance. He would like to determine whether that is true. If lawsuits are not to blame, he would like to determine what is driving up the cost.

SEN. CURTISS perceives the interim study as identifying the driving factors between escalating health costs. She feels looking at tort reform will put the cart ahead of the horse. First, the study will have to identify the factors and then address the findings.

SEN. CROMLEY agreed stating what we do know is that insurance premiums are going up. We do not know why. We need to keep the bill neutral.

Substitute Motion: **SEN. MCGEE** moved subsection (3) on lines 11 and 12 could be reworded to say "the factors affecting the cost of liability insurance for health care facilities and their associated providers;"

Discussion:

SEN. GRIMES stated they are staying away from SJR 22 from the past session, and asked **Mr. Flink** if he was comfortable with the proposed amendment.

Mr. Flink gave his approval.

SEN. GRIMES mentioned he sees this working that the chair of the committee will rotate from party-to-party, session-to-session. He suspects someone from Senate Judiciary may chair the Law and Justice Interim Committee. The first thing that would be done would have to be an itemization of the factors affecting liability insurance. One of those factors will be tort reform. Another factor could include market factors.

SEN. MCGEE stated until the study begins, all the factors cannot be identified, although they can guess what a few of those

factors would be. He thinks issues of tort will imply not only a court case, but also those things that lead up to a court case or settlement. Malpractice of doctors is a legitimate factors to be considered.

SEN. WHEAT felt underwriting factors are also a consideration.

SEN. GRIMES wonders where that information will come from.

SEN. O'NEIL added it could be that the Montana Medical Insurance will maybe need to provide its own insurance. This could be a strategy for a solution.

SEN. WHEAT suggested maybe the state could provide insurance.

SEN. GRIMES agreed there are other avenues available and should be considered.

Vote: **SEN. MCGEE'S** motion that subsection (3) on lines 11 and 12, be reworded to say "the factors affecting the cost of liability insurance for health care facilities and their associated providers;" **carried UNANIMOUSLY** with **SEN. MANGAN** voting by proxy.

Motion: **SEN. CROMLEY** moved to strike lines 26-27, on page 1.

Discussion:

SEN. CROMLEY felt this language makes a predetermination as to what the problems are. In addition, **SEN. CROMLEY** feels there are more than seven methods of cost containment.

Vote: **SEN. CROMLEY's** motion to strike lines 26-27, on page 1, **carried UNANIMOUSLY**, with **SEN. MANGAN** voting by proxy.

SEN. GRIMES felt the only "WHEREAS" clauses needed are the last one on page one, lines 28-30, and also the clause on page 1, lines 20-22.

SEN. MCGEE pointed out the reference to "professional" liability insurance on line 29, and also suggested adding in "and their associated providers" when talking about health care facilities on line 30.

SEN. GRIMES authorized **Ms. Lane** to make those changes in language where ever the language appears in the resolution.

In looking at lines 23 through 25, **SEN. O'NEIL** recalled **Mr. Smith** testifying that high premiums was not the only factor in rising health care costs.

SEN. CROMLEY agreed stating the causes for rising health care are variable.

SEN. GRIMES suggested changing the language on line 24 to read "may be forcing" instead of "are forcing".

SEN. PERRY disagreed saying it is not a "maybe," but rather it is a definite factor. He also stated it is not only in rural areas, but rather all of Montana is rural.

Motion: **SEN. O'NEIL** moved to strike "rural areas of" on page 1, line 24.

Vote: **SEN. O'NEIL's** motion to strike "rural areas of" on page 1, line 24 **carried UNANIMOUSLY**, with **SEN. MANGAN** voting by proxy.

On line 21, **SEN. GRIMES** pointed out that **Mr. Smith** had suggested striking the word "major." **SEN. GRIMES** understood his arguments, but feels it is a major factor to the cost of providing treatment by the hospital not the cost of health care for the patient.

SEN. GRIMES sees a distinction.

Motion: **SEN. O'NEIL** moved to strike "are" on page 1, line 24, and insert "may be".

Discussion:

SEN. O'NEIL would like to go into the study without minds already being made up.

Vote: **SEN. O'NEIL's** motion to strike "are" on page 1, line 24, and insert "may be" carried with **Senators Perry** and **Grimes** voting no, and **Sen. Mangan** voting aye by proxy.

Motion: **SEN. CROMLEY** moved to strike "are" on page 1, line 21, and insert "may be."

Vote: **SEN. CROMLEY's** motion to strike "are" on page 1, line 21, and insert "may be" carried with **Senators Perry** and **Grimes** voting no, and **Sen. Mangan** voting aye by proxy.

SEN. GRIMES suggested striking the first two "WHEREAS" clauses.

SEN. CROMLEY stated health care providers are alarmed and that has been very consistent.

SEN. McGEE believed the first "WHEREAS" clause is valid.

SEN. WHEAT and **SEN. CROMLEY** agreed.

SEN. GRIMES noted **Ms. Lane** should change the title of the resolution as needed.

(Tape : 3; Side : B)

Motion: **SEN. McGEE** moved **SJR 32 BE CONCURRED IN AS AMENDED.**

Vote: **SEN. McGEE's** motion that **SJR 32 BE CONCURRED IN AS AMENDED** carried unanimously with **Sen. Mangan** voting by proxy. Amendment SJ003202.avl was delivered to the Committee Secretary later that afternoon, **EXHIBIT(jus78a04)**.

ADJOURNMENT

Adjournment: 12:45 P.M.

SEN. DAN McGEE, Vice-Chairman

CINDY PETERSON, Secretary

DG/CP

EXHIBIT (jus78aad)